



DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[Docket No. BOP-1171-P]

RIN 1120-AB71

Inmate Discipline Program: Disciplinary Segregation and Prohibited Act Code Changes

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend, clarify, and streamline inmate discipline regulations to conform with current practice; to adopt recommendations of the January 2016 U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing to reduce the potential length of the disciplinary segregation sanction; and to amend and clarify the list of prohibited act codes.

DATES: Electronic comments must be submitted, and written comments must be postmarked, no later than 11:59 pm on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Please submit electronic comments through the regulations.gov website, or mail written comments to the Legislative & Correctional Issues Branch, Office of General Counsel, Bureau of Prisons, 320 First Street NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Daniel J. Crooks III, Assistant General Counsel/Rules Administrator, Federal Bureau of Prisons, at the address above or at (202) 353-4885.

SUPPLEMENTARY INFORMATION:

Please note that all comments received are considered part of the public record and made available for public inspection online at www.regulations.gov. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not

want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted to www.regulations.gov.

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I. Background

In this document, the Bureau of Prisons (Bureau) proposes to amend, clarify, and streamline inmate discipline regulations in 28 CFR part 541 to conform with current practice; to adopt recommendations of the U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing (January 2016)¹(hereinafter “Report”) to reduce the potential length of the disciplinary segregation sanction; and to amend and clarify the list of prohibited act codes.

A. Clarifying changes.

Section 541.1 currently indicates that the purpose of the subpart is to describe the inmate

¹ U.S. Department of Justice Report & Recommendation Concerning the Use of Restrictive Housing, U.S. Department of Justice, Office of Justice Programs (January 2016), *available at* <https://www.ojp.gov/ncjrs/virtual-library/abstracts/us-department-justice-report-and-recommendations-concerning-use>.

discipline program. We first propose to add introductory language clarifying that the subpart does not create a private right of action or otherwise permit civil claims for alleged violations. We next propose to make non-substantive alterations in this section to clarify that inmate discipline helps ensure the safety, security, and orderly operation of correctional facilities as well as the protection of the public by sanctioning inmates who commit prohibited acts. We also retain language indicating that the subpart describes the inmate discipline program and ensures that sanctions will not be imposed in a capricious or retaliatory manner. Finally, we reiterate that, consistent with the Rehabilitation Act of 1973, for all discipline cases, the Unit Discipline Committee or Disciplinary Hearing Officer shall consider the individual inmate's mental health and disabilities when determining the appropriateness of sanctions.

Section 541.2 states that the Bureau's inmate discipline program applies to sentenced and unsentenced inmates in Bureau custody and those designated to any prison, institution, or facility in which persons are held in custody by direction of, or under an agreement with, the Bureau of Prisons. Although this language implicitly includes inmates designated to Bureau contract facilities, the Bureau proposes to make this inclusion explicit.

We propose to alter this section to indicate that, for the purposes of these regulations, "staff" indicates staff authorized by the Bureau to implement the inmate discipline program as described in this subpart, and that the inmate discipline program applies to sentenced and unsentenced inmates in Bureau custody or in any facility, including community confinement facilities, in which persons are held in custody by the direction of, or under an agreement with, the Bureau.

Section 541.3 describes prohibited acts and available sanctions. The current regulation divides prohibited acts into four separate categories based on severity: Greatest; High; Moderate; and Low. We now propose to eliminate the "Low" category to eliminate prohibited act codes that were underutilized. The revised list of prohibited acts is explained in more detail below.

B. Prohibited Act Codes.

The Bureau proposes to make several changes to 28 CFR 541.3 Table 1 to § 541.3 –

Prohibited Acts and Available Sanctions, as follows:

Clarification of code 101, regarding assaulting any person, or an armed assault on the institution's secure perimeter (to be used only when serious physical injury has been attempted or accomplished).

We propose to clarify the language of this code to indicate that the prohibited conduct is the attempted or accomplished assault and/or battery of any person involving serious physical injury, or an armed assault on the institution's secure perimeter. No changes will be made to the substance or application of this code.

Expansion of code 102, regarding escape.

We propose to expand this code, which currently includes “escape from escort; escape from any secure or non-secure institution, including community confinement; escape from unescorted community program or activity;” and “escape from outside a secure institution,” to clarify that this code prohibits any unauthorized departure from custody, including, but not limited to, unauthorized departure from the buildings, lands, property or perimeter (inside or outside) of any secure or non-secure facility; unauthorized departure from community confinement, work detail, program or activity (whether escorted or unescorted); and unauthorized departure from any authorized location regardless of electronic monitoring devices.

Escape from a work detail is currently included in prohibited act code 200, which we now propose to delete, as the language in that code will be encompassed by revised code 102. In the July 26, 2005, proposed rule on the subject, the Bureau explained that code 200 was created to allow for a less severe sanction than that imposed for any other type of escape if an inmate voluntarily chooses to minimize his prohibited act by returning (70 FR 43093). However, in the intervening years, the Bureau has found that allowing for a less severe sanction for escapes with voluntary return has resulted in greater incidences of inmate escapes and attempts to escape in order to procure contraband to introduce into Bureau facilities.

Therefore, to deter any unauthorized departure from Bureau custody, regardless of whether the inmate chooses to voluntarily return, and to emphasize the severity of the prohibited act, we propose to delete code 200 and include escapes from work details within code 102 in the Greatest Severity Level.

Clarification of code 103, regarding setting a fire.

We propose to clarify the language of this code to prohibit causing ignition or combustion (including, but not limited to, fire or explosion) that either threatens serious bodily harm or is done in furtherance of another Greatest Severity Level prohibited act. No changes will be made to the substance or application of this code.

Clarification of code 104, regarding possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive, ammunition, or any instrument that has been modified in order to be used as a weapon.

We propose to clarify the language of this code to prohibit possession, manufacture, or introduction of any item that has been weaponized. Such an item can include firearms, sharpened instruments, unauthorized blades, explosives, ammunition, unauthorized chemicals, or any other object that has been modified in order to be used as a weapon.

Combining codes 105 and 106, regarding rioting and encouraging others to riot.

We propose to combine code 105, rioting, and 106, encouraging others to riot, into one code 105 that clarifies the prohibited act as rioting; promoting rioting; or encouraging others to participate in a riot. In this code, we also define the term “riot” as a disturbance with two or more people that involves violence or threats of violence or damage to government property, for the purpose of preventing or coercing official action.

Expansion of code 108, regarding hazardous tools.

We propose to expand this code, which currently includes “possession, manufacture, introduction or loss” of hazardous tools, to also include “use” of a hazardous tool. We also propose to include in the list of hazardous tool examples those “items necessary in the use of these devices.” Making these changes would allow for discipline if telltale evidence of such

items as a cellphone, electronic device, or escape paraphernalia were not found, but items which could only be used with prohibited items are found to have been used.

Separation of codes 110, 111, 112, 113, regarding drugs, narcotics, and marijuana, from those regarding alcohol and intoxicants.

We propose to make a technical amendment involving prohibited act codes 110, 111, 112, and 113, all of which currently cover the prohibited acts of refusing to be tested for, introducing, or making, using, or possessing drugs or alcohol/intoxicants not prescribed by medical staff. Having one set of prohibited acts that relates to both drugs and alcohol/intoxicants together has made it difficult for the Bureau to effectively track the number of incident reports related solely to drugs or solely to alcohol/intoxicants.

We therefore propose to separate the one set of prohibited activities into two: one group of codes relating to drugs, and the other to alcohol/intoxicants. To accomplish this, we created four new prohibited act codes: 116, 117, 118, and 119. Codes 110 through 113 will now relate solely to drugs, and codes 116 through 119 will repeat the activities described in 110 through 113, but with regard to alcohol/intoxicants. The wording of the codes has not otherwise changed.

Combination of codes 114, 205, 206, 229, and 300, regarding non-consensual, sexually explicit conduct up to and including assault.

We propose to combine codes 114, 205, 206, 229, and 300 to clarify that the behavior we seek to prohibit encompasses additional non-consensual, sexually explicit conduct, including “sexual assault.” Instead, we propose to clarify that code 114 prohibits sexually explicit conduct involving force, threat of force, or threat of harm; or sexually explicit conduct without consent or through coercion; or attempts thereof. Revised code 114 would encompass sexually explicit conduct that staff have observed and instructed an inmate to cease.

In this code, we further define the term “sexually explicit conduct” as it is described in 18 U.S.C. 2256(2)(A): verbal or written sexual proposals or threats; actual or simulated sexual intercourse, including but not limited to genital-genital, oral-genital, anal-genital, or oral-anal,

whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the anus, genitals, or pubic area of any person.

There has been a general increase over several years in the occurrence of these prohibited acts, particularly as aimed at staff. This behavior, especially towards staff, rises to the greatest level of severity because it results in the existence of a sexually hostile work environment for staff. Accordingly, we seek to increase the severity level for these behaviors to underscore the level of seriousness of this conduct, to deter this type of activity, and to promote a healthy work environment for Bureau staff.

As conforming amendments, the Bureau proposes to delete codes 205 (engaging in sexual acts), 206 (making sexual proposals or threats to another), 229 (sexual assault of any person, involving non-consensual touching without force or threat of force), and 300 (indecent exposure) because the conduct those codes prohibit would be encompassed under revised code 114.

Addition of code 194, regarding unauthorized use of social media and fund transfer services.

We propose to add a Greatest Severity Level prohibited act code (194) for accessing, using, or maintaining social media accounts (including, but not limited to the following: Facebook, Twitter, Instagram, Snapchat, TikTok, etc. or any successor), or directing others to establish or maintain social media accounts on the inmate's behalf for the purpose of committing or aiding in the commission of a criminal act; of committing or aiding in the commission of any Greatest category prohibited act; or of circumventing authorized communications monitoring for the purpose of committing or aiding in the commission of a criminal act or of any Greatest category prohibited act. This code also prohibits inmates' use of fund transfer services such as CashApp, as explained in more detail below.

In determining whether the Bureau can restrict inmate access to social media accounts, the appropriate standard to consider is whether such a restriction is reasonably related to legitimate penological interests. See, e.g., Aguiar v. Recktenwald, No. 3:13-2616, 2015 WL

5829727, at *8 (M.D. Pa. Sept. 30, 2015) (citing Solan v. Zickefoose, 530 F. App'x 109, 110 (3d Cir. 2013), *cert. dismissed*, 134 S. Ct. 1499 (2014), reconsideration denied, 134 S. Ct. 1927 (2014) (quoting Turner v. Safley, 482 U.S. 78, 89 (1987))). In Aguiar, the court articulated the Turner factors demonstrated by the Bureau's policy of restricting social media use by inmates, as follows:

The first Turner factor requires a valid, rational connection between the prison regulation and the legitimate governmental interest articulated to justify it. Here, the record supports a rational connection between controlling indirect communications with outsiders through effectuating the deactivation of inmates' Facebook accounts, and the articulated goal of promoting the security of the prison institution and the protection of the community.... The policy... of restricting inmates from accessing social media platforms as a means to communicate with unauthorized contacts, "is content neutral and does not work to exclude any particular message or expression." McIntyre v. Bayer, 243 F.3d 548 (9th Cir. 2000)

If the prison facility acquiesced upon discovering that an inmate's Facebook account was being operated to convey content from the inmate himself, it would open the door to inmates communicating with a virtually unlimited number of individuals. Those Facebook contacts could include other confined inmates, gang members with whom the inmate may be affiliated with and prohibited from contacting, or perhaps more disturbingly victims of the inmate's crimes or other individuals who may be subject to deliberate intimidation by the inmate (or by the inmate's contact who controls the account, harassing the victim in effective anonymity). The uncontroverted evidence indicates that administrators have determined, in their sound discretion, that permitting inmates to maintain Facebook accounts through third parties would jeopardize the security and order of the facility and would circumvent established policies regulating communication that enhance prison security....

With regard to the second factor, Aguiar's First Amendment right to communication or association has not been impermissibly denied, as the challenged policy leaves ample alternatives to communicate with friends and family. Specifically, Aguiar retains the use of other methods of communication with outsiders through prison visitation, postal mail, telephone, and TRULINCS messaging. ... Specifically, the First Amendment does not require "that the government provide telephones, videoconferencing, email, or any of the other marvelous forms of technology that allow instantaneous communication across geographical distances; the First Amendment is a limit on the exercise of governmental power, not a source of positive obligation." Holloway v. Magness, No. 5:07-00088, 2011 WL 204891, at *7 (E.D. Ark. Jan. 21, 2011).

The third Turner factor considers the impact that the accommodation of the asserted constitutional right will have on Defendants. Here, the Court has considered the consequence of accommodating the asserted constitutional right on the allocation of prison resources generally, the other inmates, and the prison administration. “When accommodation of an asserted right will have a significant ‘ripple effect’ on fellow inmates or prison staff, courts should be particularly deferential to the informed discretion of corrections officials.” *Turner*, 482 U.S. at 89. Permitting inmates to effectively curate the content posted on their Facebook pages through an authorized agent would impose insurmountable burdens on prison staff tasked with monitoring inmates’ communications, would require incredible prison resources to effectively regulate, and would undermine the infrastructure of communication policies designed to safeguard prison operations. In toto, these considerations demonstrate a substantial burden on prison officials and resources as an impact of accommodating Aguiar’s access to Facebook.

The fourth Turner factor, the availability of other alternatives to effectuate the BOP’s objective, weights in favor of the BOP, as Aguiar has not offered any meaningful alternatives to Defendants’ current arrangement of disclosing to Facebook inmates whose Facebook accounts are updated by third parties in violation of Facebook’s user agreement, and more generally of discouraging inmates from gaining access to social media platforms in order to communicate with unauthorized contacts.

In sum, the Turner factors weigh in favor of the BOP’s informal policy of restricting inmates from maintaining social media platforms such as Facebook, as the decision to notify Facebook upon discovering an inmate with an active Facebook account does not impermissibly curtail an inmate’s right to communicate with persons outside the prison. As Aguiar has not alleged the deprivation of a constitutional right, Defendants are entitled to qualified immunity with respect to these First Amendment claims.

Aguiar v. Recktenwald, 2015 WL 5829727, at *9. In addition, several states currently have provisions in law or policies prohibiting prisoners from accessing social media. See, e.g., Ala. Code 14-11-70 (2013); Texas Department of Criminal Justice Offender Orientation Handbook, Ch. 1, III. N., p. 24 (Apr. 2016); New Mexico Corrections Department Policy CD-044005, Internet Use, page 5, M.1. (May 20, 2015); North Carolina Department of Public Safety, Prisons, Policy & Procedures, General, B.0300 Inmate Conduct Rules (y)(2) (July 10, 2013).

We further propose to include language necessary to enable the Bureau to target and eliminate inmates’ use of fund transfer services like CashApp. When inmates use these services to send and receive money, Bureau staff are unable to monitor those transfers. CashApp and

similar applications employ encryption technology that enables inmates to avoid detection, allowing them to use these platforms for unlawful purposes such as money laundering. Without the ability to closely monitor fund transfers using CashApp and similar applications, Bureau staff are unable to advise and assist other federal, state, and local law enforcement entities with identifying criminal or potentially criminal activity in which a particular inmate is engaged. Thus, inclusion of this language will provide us with a tool to disincentive an inmate's use of these fund transfer services and to hold inmates accountable for violating the prohibition against such use.

Addition of code 195, regarding use of video visits to commit or aid in the commission of a criminal act or any other Greatest category prohibited act.

We propose to add a Greatest Severity Level prohibited act code (195) for use of video visits to commit or aid in the commission of a criminal act or any other Greatest category prohibited act. The Bureau adds this code to account for advances in technology that have allowed for the use of video visiting by inmates as an alternative to telephonic communication and visiting room visitation. This code is necessary to discipline for infractions similarly to current code 196, "use of the mail for an illegal purpose or to commit or further a Greatest category prohibited act;" and 197, "use of the telephone for an illegal purpose or to commit or further a Greatest category prohibited act."

Expansion of code 196, regarding use of the mail for an illegal purpose.

Current code 196 allows for discipline for use of the mail for an illegal purpose or to commit or further a Greatest category prohibited act. We propose to expand this code to include misuse of any form of electronic mail and messaging, including messaging through the TRULINCS system. The Bureau makes this addition to account for advances in technology that have allowed for the use of electronic mail by inmates as an alternative to written correspondence and telephone communication. This change is necessary to discipline for infractions similarly to current code 196, "use of the mail for an illegal purpose or to commit or

further a Greatest category prohibited act;” and 197, “use of the telephone for an illegal purpose or to commit or further a Greatest category prohibited act.”

Clarification of code 201, regarding fighting.

We propose to modify this code to clarify that the term “fighting” is defined as a hostile physical or verbal encounter between two or more persons. This is more descriptive than the previous code description, which was simply “fighting with another person.” No other changes are made in the substance or application of this code.

Addition of code 202, regarding possession of forms used in fraudulent filing.

We propose to create a new code 202 prohibiting possession of any forms that may be used in the fraudulent filing of Uniform Commercial Code (UCC) liens and prohibiting any attempt to publicly disclose the private information of others for unlawful purposes.

For several years, inmates have been filing fraudulent liens against Bureau staff, typically alleging that a particular Bureau staff member is financially indebted to the inmate because of something the Bureau staff did or did not do. Inmates frequently file these liens under the purported authority of the UCC, which has been adopted by most states.

Under the UCC, a creditor files a financing statement with the required state office. This financing statement creates a lien. To remove the lien, the creditor must file a formal amendment. When Bureau legal staff learn that a lien has been filed against a staff member, they file a demand letter requesting to have the lien removed. If the inmate refuses to remove the lien, the Bureau staff may file a document contesting the lien. Specifically, the UCC provides a debtor the opportunity to file a correction on a record that is believed to be inaccurately or wrongfully filed. The filing of a correction statement does not invalidate the original financing statement but does serve to alert anyone searching the records for the debtor’s name that this financing statement is contested.

Filing fraudulent liens or attempting to disclose the private information of others is prohibited by the Court Security Improvement Act of 2007 (Pub. L. 110-177, Jan. 7, 2008). That

Act added two new provisions to the Federal Criminal Code: 18 U.S.C. 1521, which established a criminal offense for filing, attempting to file, or conspiring to file, a false lien or encumbrance against the real or personal property of a Federal Judge or Federal law enforcement officer; and 18 U.S.C. 119, which established a criminal offense for making publicly available “restricted personal information” about a covered person” with the intent to threaten, intimidate, or incite a crime of violence against such person. Such information, as defined in that section, includes an individual’s Social Security number, home address, home phone number, mobile phone number, personal email, or home fax number. The definition of “covered persons” in 18 U.S.C. 119(b)(2) includes court officers, jurors, witnesses, informants, and Federal law enforcement officers, which includes Bureau of Prisons staff.

The Bureau’s current regulations explain, in 28 CFR 500.1(h), that contraband is material prohibited by law, regulation, or policy that can reasonably be expected to cause physical injury or adversely affect the safety, security or good order of the facility or protection of the public. The filing of fraudulent liens and the possession of documents that contain another’s restricted personal information impacts the security and good order of Bureau facilities.

Federal courts have upheld prohibition of UCC forms and documents related to UCC filings, as contraband. For instance, in Edmonds v. Sobina, 296 F. App’x 214 (3d Cir. 2008), the court held that discipline imposed upon a federal inmate in unauthorized possession of UCC filing forms did not implicate any constitutionally protected liberty interest. 296 F. App’x 217–18. The court upheld the Bureau’s policy of restricting possession of such items as contraband, indicating that this restriction did not violate the inmate’s First Amendment right to possess legal materials. Id.; see also Monroe v. Beard, 536 F.3d 198 at 207–09 (3d Cir. 2008) (upholding Pennsylvania DOC prohibition of UCC forms, indicating that possession of such forms “demonstrates the considerable ‘ripple effect’ that accommodating the plaintiff’s right to possess these items may have on DOC resources and on guards and DOC employees if other inmates were to successfully file false liens.”); Dantzler v. Beard, No. 09-275, 2010 WL 1008294, *10

(W.D. Pa. Mar. 15, 2010) (Pennsylvania Department of Corrections confiscation of an inmate's UCC materials "did not violate his procedural due process rights because, as a matter of law, Plaintiff has no property rights in UCC materials."); Lawson v. Stephens, No. 7:15-173, 2018 WL 10731584, at *1 (N.D. Tex. June 22, 2018) (Texas Department of Correction policy restricting inmate possession of UCC materials "does not violate plaintiff's First Amendment right to possess legal materials . . ."); Torres v. Fla. Dep't of Corr., 742 F. App'x 403 (11th Cir. 2018) (Florida Department of Corrections "rule permitting confiscation of inmate's UCC forms was reasonably related to legitimate penological interest in preventing prisoners from filing fraudulent UCC liens, and thus the rule did not violate inmate's First Amendment rights.").

Additionally, in United States v. Martin, 356 F. Supp. 2d 621 (W.D. Va. 2005), the court held that imposition of a permanent injunction barring federal inmates from filing financing statement or liens without prior court approval was warranted, where inmates had filed meritless financing statements against federal judges and Bureau officials for purpose of intimidation and harassment, and where inmates continued to try to file liens against other federal officials involved in their cases after the government filed suit. Id. at 628–29.

For these reasons, the Bureau now proposes to prohibit inmate possession of any forms that may be used in the fraudulent filing of UCC liens and any attempt to publicly disclose the private information of others for unlawful purposes.

Clarification of code 203, regarding threatening.

Current code 203 prohibits threatening another with bodily harm or any other offense. The Bureau now proposes to modify this code to clarify the prohibited conduct as communicating an intent to jeopardize the safety, security, and orderly operation of a Bureau facility, protection of the public, or the person or property of another. No substantive or application changes are made to this code.

Clarification of code 204, regarding extortion and blackmail.

Current code 204 prohibits extortion; blackmail; protection; demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing. The Bureau now proposes to modify this code to clarify the prohibited conduct as extortion, blackmail, or otherwise demanding or receiving anything of value using actual or threatened force, violence, fear, or intimidation. No change is made to the substance or application of this rule.

Reservation of code 205, regarding sexual acts.

We propose to delete this code as explained above.

Reservation of code 206, regarding making sexual proposals or threats to another.

We propose to delete this code as explained above.

Addition of code 210, regarding possession of sexually explicit material.

We propose to create a new code 210 prohibiting possession of sexually explicit material. Possession of sexually explicit and sexually provocative images, writings, or other materials can pose a danger to the security of the institution. Also, the presence of these materials in Bureau facilities creates a sexualized work environment, which is potentially disturbing to staff conducting routine searches of inmate property. This is particularly a concern when inmates openly display sexually provocative images in their cells. Furthermore, this is also a concern for inmates under specific correctional management plans relating to sexual offenses or under treatment for disorders related to sexual dysfunction, as ongoing possession of sexually explicit images or documents is a risk factor for recidivism and counterproductive to rehabilitation.

Current Bureau regulations in 28 CFR part 540 prohibit inmates from receiving sexually explicit material. See, e.g., 28 CFR 540.14(d)(7) (correspondence may be rejected if it is “[s]exually explicit material (for example, personal photographs) which by its nature or content poses a threat to an individual’s personal safety or security, or to institution good order . . .”); 28 CFR 540.71(b)(7) (an incoming publication may be rejected if it “is sexually explicit material

which by its nature or content poses a threat to the security, good order, or discipline of the institution, or facilitates criminal activity.”).

Additionally, 28 CFR 540.72 explains the statutory restriction requiring return of commercially published information or material that is sexually explicit or features nudity. This derives from repeated Congressional mandates against making such information or material available to inmates. See 18 U.S.C. 4042 note (“Sexually Explicit Commercially Published Material”).² In section 540.72(b)(4), “sexually explicit” is defined as “a pictorial depiction of actual or simulated sexual acts including sexual intercourse, oral sex, or masturbation.”

As indicated above in relation to revised code 114, the Bureau recognizes the definition of “sexually explicit conduct” in 18 U.S.C. 2256(2)(A), which is as follows:

...“sexually explicit conduct” means actual or simulated--

- (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (ii) bestiality;
- (iii) masturbation;
- (iv) sadistic or masochistic abuse; or
- (v) lascivious exhibition of the anus, genitals, or pubic area of any person;

² [Pub. L. 107-77, Title VI, sec. 614](#), Nov. 28, 2001, 115 Stat. 801, provided that:

Hereafter, none of the funds appropriated or otherwise made available to the Federal Bureau of Prisons may be used to distribute or make available any commercially published information or material to a prisoner when it is made known to the Federal official having authority to obligate or expend such funds that such information or material is sexually explicit or features nudity.

Similar provisions were contained in the following prior Appropriations Acts:

[Pub. L. 106-553](#), § 1(a)(2) [§ 614], Dec. 21, 2000, 114 Stat. 2762A-106.

[Pub. L. 106-113](#), Div. B, § 1000(a)(1) [Title VI, § 615], Nov. 29, 1999, 113 Stat. 1501A-54.

[Pub. L. 105-277](#), Div. A, § 101(b) [Title VI, § 614], Oct. 21, 1998, 112 Stat. 2681-113.

[Pub. L. 105-119, Title VI, § 614](#), Nov. 26, 1997, 111 Stat. 2518.

[Pub. L. 104-208](#), Div. A, § 101(a) [Title VI, § 614], Sept. 30, 1996, 110 Stat. 3009-66.

As indicated, the Bureau defines “materials” as any pictorial depiction, to include photos, drawings, digitally or computer-manipulated image, or other visual depictions (i.e., collages, posters). Therefore, this code seeks to prohibit inmate possession of visual depictions of actual or simulated sexual intercourse, bestiality, masturbation, sadistic or masochistic abuse, or lascivious exhibition of the anus, genitals, or pubic area of any person.

By adding this code, we seek to reduce currently prohibited behaviors to clarify that the possession of sexually explicit material poses a potential harm to staff by creating and maintaining a sexually hostile work environment, and to the community when sexual offenders persist in conduct contrary to rehabilitation goals.

Combination of current code 212, regarding group demonstrations; current High Severity Level code 213, encouraging others to refuse to work or to participate in a work stoppage; and current Moderate Severity Level code 336, circulating a petition.

We propose to combine current code 212, regarding group demonstrations, current High Severity Level code 213, encouraging others to refuse to work or to participate in a work stoppage, and current Moderate Severity Level code 336, circulating a petition. Each of these codes describes prohibited conduct which may be described as participating in or promoting others to participate in unauthorized conduct as a group. Therefore, we propose to create a new code 212, which would prohibit participating or promoting others to participate with two or more persons in unauthorized behavior, whether planned or unplanned (including, but not limited to, unauthorized work stoppage or refusal to work or eat, group demonstrations, sit-ins, creating or circulating a petition, etc.).

Prohibiting participation by two or more inmates in authorized behavior, such as circulating petitions, for instance, to maintain control over group activity by prisoners is a reasonable response to a legitimate penological concern. See *Duamutef v. O’Keefe*, 98 F.3d 22, 24 (2d Cir. 1996) (explaining that as long as individual grievance procedures are available, prisons may bar circulation of petitions); *Wolfel v. Morris*, 972 F.2d 712, 716 (6th Cir. 1992) (“[I]t seems clear that a prison does not violate a prisoner’s rights by refusing to allow circulation

of petitions.”). If the group behavior is coupled with a demonstrated and evidenced threat to the safety, security, or good order of the facility or protection of the public, the penological concern is heightened and the necessity of disciplining such activity is even greater.

The appropriate, legally authorized method for inmates to formally grieve prison conditions is through the Administrative Remedy Program, described in 28 CFR part 542. Under this Program, every inmate can raise individual complaints and receive three levels of review (at the institution, Region, and Central Office levels).

Inmate petitions, group demonstrations, sit-ins, and other such group behavior are prohibited because these behaviors involve multiple inmates with goals of contravening prison operations and management, and as such, these activities pose a special risk of disruption that does not exist through the sanctioned, individual administrative remedy complaint system. Such unauthorized group conduct threatens the safety, security, and good order of the facility and the protection of the public. This behavior not only poses serious security risks, but also undermines the effectiveness and legitimacy of the Administrative Remedy Program

Clarification of code 216, regarding giving or offering an official or staff member a bribe, or anything of value.

We propose to make a minor modification to this code to clarify that the prohibited conduct is giving or offering a staff member something of value to persuade or induce favor or action, not simply giving anything of value without such an expectation. This is a more accurate statement of the problematic conduct. We do not propose to make substantive or application changes to this code.

Clarification of code 218, regarding destroying property.

Currently, code 218 prohibits destroying, altering, or damaging government property, or the property of another person, having a value in excess of \$100.00, or destroying, altering, damaging life-safety devices (e.g., fire alarm) regardless of financial value. We propose to make minor edits to the language of this code to clarify that the prohibited conduct is destroying, altering, or damaging any of the following: property valued over \$100.00 belonging to the

government or another person; or property necessary for the protection of life and/or safety (e.g., fire alarms), regardless of financial value. This proposal does not make substantive changes or changes in application of the code.

Modification of code 219, regarding stealing and theft (including data obtained through the unauthorized use or access to any media or equipment on which electronic data is stored).

We propose to modify High Severity Level prohibited act code 219 regarding stealing and theft to include theft of data obtained through unauthorized use or access to any media or equipment on which electronic data is stored. Inmates have previously been able to compromise certain electronic storage systems to obtain unauthorized information to “check the paperwork” of other inmates—i.e., to find out confidential information about another inmate for the purpose of targeting that inmate based on that confidential information. Targeting of other inmates based on this confidential information, in turn, presents safety and security concerns for inmates and staff due to the possibility of violence or other unlawful acts being committed upon the inmate whose confidential information was stolen.

Modification of code 221, regarding being in an unauthorized area with a person of the opposite sex without staff permission.

We propose to modify the High Severity Level prohibited act code 221, being in an unauthorized area with a person of the opposite sex without staff permission, to clarify that inmates will be disciplined for being in an unauthorized area without staff permission with any other person, regardless of sex. This is a more accurate statement of the prohibited conduct and will not change the application of this code.

Modification of code 224, regarding assault that does not involve serious physical injury.

Currently, this code prohibits assaulting any person, but also contains a parenthetical explanation that the code should only be used when “less serious physical injury or contact has been attempted or accomplished.” Rather than leave it to the discretion of staff to determine whether injuries are “less serious,” we propose to modify this code to prohibit an assault of any person that does not involve serious physical injury, including non-consensual touching.

We also propose this modification to more clearly distinguish the behavior prohibited by this code, which is in the High Severity Level category, from the proposed revision to Greatest Severity Level code 101, which prohibits assault and/or battery of any person involving serious physical injury, or an armed assault on the institution's secure perimeter.

The revised code 224 also prohibits non-consensual touching, which is currently encompassed by code 229, sexual assault of any person, involving non-consensual touching without force or threat of force. Code 229 will be reserved, as this prohibited conduct is proposed to be encompassed by revised code 224 and possibly revised code 114.

Modification of code 228, regarding tattooing or self-mutilation.

We propose to modify the High Severity Level prohibited act code 228, tattooing or self-mutilation, to clarify that inmates will be disciplined for body modification, including but not limited to tattooing and piercing, and possession of any paraphernalia and/or tools for the use of any form of body modification. The code description will also include the caveat that this code shall not be applied to acts of self-directed violence (e.g., cutting).

This addition reflects the seriousness of the conduct, the disruptive nature of possession of such items, and the potential health concerns resulting from improper use. However, we also add the caveat that this code is not to be used in any instance involving self-directed violence or harm. This clarification reflects the Bureau's recognition that an inmate's mental health symptoms, including acute symptoms of withdrawal from drugs or other addictive substances, should not result in disciplinary sanctions.

Reservation of code 229, regarding sexual assault of any person, involving non-consensual touching without force or threat of force.

We propose to delete this code as explained above.

Addition of code 230, regarding possession and/or use of tobacco or related paraphernalia.

Currently, code 331 allows for discipline for possession, manufacture, introduction, or loss of a non-hazardous tool," including "*smoking apparatus and tobacco in any form where prohibited...*" [Emphasis added]. We propose to remove the phrase "smoking apparatus and

tobacco in any form where prohibited” and transfer it into new code 230. We also propose to clarify that smoking apparatus and tobacco in any form may include, but is not limited to, such items as vape devices and other non-conventional forms of delivery.

Increasing the severity level of possession and/or use of tobacco or related paraphernalia underscores the seriousness of the offense. This is necessary because since the last revision of the prohibited act codes, 28 CFR 551.163 codified the prohibition of possession of smoking apparatus and tobacco in any form, unless as part of an authorized religious activity.

Furthermore, since the last revision of this code, the use of alternate forms of delivery, such as vape pens, has become more prevalent among inmates in Bureau facilities, leading to further introduction of this type of prohibited contraband and increased security issues.

Modification of code 231, regarding requesting, demanding, pressuring, or otherwise intentionally creating a situation, which causes an inmate to produce or display his/her own court documents for any unauthorized purpose to another inmate.

We propose to make two modifications to code 231. We first propose to amend the language of the offense code to more accurately focus on the coercive behavior involved when an inmate seeks to obtain another inmate’s personal court documents and information for unauthorized purposes. We also propose to include language clarifying that some documents beyond “court documents” should be included as part of this code. Sensitive information about a particular inmate (including Walsh Act information) may appear on court documents or on non-court documents, including, but not limited to, PATTERN scoresheets. We therefore propose to revise the code to clarify that the prohibited conduct is requesting, demanding, pressuring, or otherwise creating a situation that causes an inmate to produce or display their own court documents or other documents (e.g., PATTERN scoresheets) that contain information about the inmate’s current or prior offense(s) for any unauthorized purpose to another inmate.

Addition of code 232, regarding introduction of any unauthorized non-hazardous item or contraband.

We propose to add a new High Severity Level prohibited act code 232, to underscore the seriousness of introducing unauthorized items (i.e., contraband) into a correctional setting. Introduction of unauthorized items cannot be monitored for their potential in creating a hazardous environment for both staff and inmates; even seemingly harmless, non Bureau-purchased items like cosmetic products or cleaning supplies may contain harmful chemicals or other dangerous substances that pose health, safety, and security risks to all individuals within the correctional setting.

Another institutional security consideration involves the unintended consequences of introduction of certain contraband into a correctional facility, including the creation or perpetuation of an unauthorized series of financial transactions. One example includes an inmate obtaining cosmetic items and dietary supplements and then marking up the price substantially to sell to other inmates who are unable to purchase such items through the official commissary. Then, the inmate who purchases the contraband from another inmate may owe a debt, which, if left unpaid, can create the precise type of volatile situation that may cause violence to erupt and risk the safety of both inmates and staff.

This new code is designed to thwart contraband introduction and minimize the risks to the health and safety of Bureau inmates, staff, and members of the public.

Addition of code 235, regarding communicating gang affiliation, participating in gang-related activities, and possession of paraphernalia indicating gang affiliation.

We propose to increase the severity level of current code 335, communicating gang affiliation, participating in gang-related activities, or possession of paraphernalia indicating gang affiliation, from the Moderate Severity Level category to the High Severity Level category. This change is proposed to underscore the seriousness of the offense, as the existence of gangs jeopardizes the safety, security, and good order of Bureau facilities.

Addition of code 294, regarding unauthorized use of social media.

We propose to create a new High Severity Level prohibited act code (294) for accessing, using, or maintaining social media, or directing others to establish or maintain social media

accounts on the inmate's behalf (including, but not limited to the following: Facebook, Twitter, Instagram, Snapchat, TikTok, etc. or any successor). In contrast to proposed code 194, code 294 acts will *not* involve commission or aid in the commission of any criminal act or any Greatest category prohibited act.

Addition of code 295, regarding use of video visits for abuses other than criminal activity.

We propose to create a new High Severity Level prohibited act code which prohibits use of video visits for abuses other than criminal activity, including, but not limited to, conduct that circumvents established video visit session monitoring procedures; conduct that permits communication with individuals other than the authorized visitors; conduct that would be unauthorized if it were to occur in an in-person visiting room; or use of the video session to commit or further another High category prohibited act.

We propose the addition of this code to deter abuses of any video visiting system in place at a Bureau facility, such as sharing passwords, not logging off the system, nudity; and/or use of visual and/or verbal communicated actions by the inmate or approved contact such as hand/body gestures outside of general sign language. General sign language is not limited to American Sign language and includes “home signs”—i.e., communicative gestures invented or created by a Deaf person within their own family—as well as other visual or tactual communication forms that might be used by certified Deaf interpreters or other individuals who are Deaf or Hard of Hearing. General sign language does not include gang signs/signals, sexual acts/gestures/innuendos, prohibited substance/drug use, etc.

The Bureau adds this code to account for advances in technology that have allowed for the use of video visiting by inmates as an alternative to telephonic communication and visiting room visitation. This code is necessary for infractions similar to those addressed by codes 296 and 297, which address similar conduct for use of the mail and telephone for such abuses “other than criminal activity which circumvent” monitoring or to “commit or further a High category prohibited act.”

Expansion of code 296, regarding use of the mail for abuses other than criminal activity.

Current code 296 allows for discipline for use of the mail for abuses other than criminal activity that circumvent mail monitoring procedures (e.g., use of the mail to commit or further a High category prohibited act, special mail abuse; writing letters in code; directing others to send, sending, or receiving a letter or mail through unauthorized means; sending mail for other inmates without authorization; sending correspondence to a specific address with directions or intent to have the correspondence sent to an unauthorized person; and using a fictitious return address in an attempt to send or receive unauthorized correspondence).

We propose to expand this code to include misuse of any form of electronic mail and messaging, including, but not limited to, messaging through the TRULINCS system. The Bureau makes this addition to account for advances in technology that have allowed for the use of electronic mail by inmates as an alternative to written correspondence and telephone communication. This change is necessary to discipline for infractions similarly to current code 296, and 297, “Use of the telephone for abuses other than illegal activity which circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a High category prohibited act.”

Reservation of code 300, regarding indecent exposure.

We propose to delete this code as explained above.

Clarification of code 313, regarding lying or providing a false statement to a staff member.

We propose to modify this code to clarify that the prohibited conduct is providing a false statement to a staff member and includes feigning illness. This is a more accurate description of the prohibited behavior. Adding feigning illness to this code will serve to deter false inmate reports of illness, which not only subvert the inmate’s rehabilitative programming requirements, but also have the potential to unnecessarily burden both staff and medical professionals and cause unnecessary expenditures.

Combination of code 324, regarding gambling, with code 325, preparing and conducting a gambling pool, and code 326, possession of gambling paraphernalia.

We propose to combine these three codes into one code 324, describing the prohibited conduct as gambling, possession of gambling paraphernalia, or preparing or conducting a gambling pool. The previous separation of these three types of conduct was unnecessary, as the conduct described is interconnected.

Clarification of code 331 to remove reference to smoking “where prohibited.”

Currently, code 331 prohibits possession, manufacture, introduction, or loss of a non-hazardous tool, equipment, supplies, or other non-hazardous contraband (tools not likely to be used in an escape or escape attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety) (other non-hazardous contraband includes such items as food, cosmetics, cleaning supplies, *smoking apparatus and tobacco in any form where prohibited*, and unauthorized nutritional/dietary supplements)” [Emphasis added].

We propose to remove the phrase “smoking apparatus and tobacco in any form where prohibited” and increase the severity level of this prohibited conduct to create High Severity code 230. We also eliminate/delete code 332 – Smoking where prohibited, because smoking apparatus is prohibited and smoking is functionally disallowed for inmates unless part of an authorized religious activity. See 28 CFR 551.162–.163.

We also propose to streamline the conduct description in this code to prohibit possession, manufacture or loss of a non-hazardous *item* or contraband, further explaining in the parenthetical that the term “non-hazardous item or contraband” includes, but is not limited to, items not likely to be used in an escape; items not likely to serve as a weapon capable of doing serious bodily harm to others; items not hazardous to institutional security or personal safety; unauthorized food, cosmetics, cleaning supplies, and unauthorized nutritional/dietary supplements.

Reservation of code 332, regarding smoking where prohibited.

We propose to delete this code as explained above.

Reservation of code 335, regarding communicating gang affiliation; participating in gang related activities; possession of paraphernalia indicating gang affiliation.

We propose to delete this code as explained above.

Addition of code 337, increasing severity level for code 404, regarding using abusive or obscene language.

We propose to increase the severity level of Low Severity Level code 404, using abusive or obscene language, to Moderate Severity Level prohibited act code 338. This code will be moved to the 300 level because, as will be explained below, we propose to eliminate the Low Severity Level prohibited act code (400) series entirely. We note that this code does not apply to use of abusive or obscene language uttered or written by an inmate with a relevant disability (e.g., Tourette Syndrome).”

Addition of code 338, increasing severity level for codes 407 & 409, regarding conduct with a visitor in violation of Bureau regulations and unauthorized physical contact (e.g., kissing, embracing).

We propose to increase the severity level of Low Severity Level code 407 and 409 for inappropriate conduct in the visiting room. These codes would combine to become Moderate Severity Level prohibited act code 338, “unauthorized conduct in the visiting room (e.g. kissing, embracing, etc.).” Also, as explained below, we propose to eliminate the Low Severity Level prohibited act code (400) series entirely. These changes will be further explained below.

Addition of electronic mail to code 396, regarding use of the mail for abuses other than criminal activity.

Current code 396 allows for discipline for use of the mail for abuses other than criminal activity that do not circumvent mail monitoring; or use of the mail to commit or further a Moderate category prohibited act. We propose to add “electronic mail” to this code to account for advances in technology that have allowed for the use of electronic mail by inmates as an alternative to written correspondence and telephone communication. The term “electronic mail” shall include any form of electronic mail and messaging, including, but not limited to, messaging through the TRULINCS system. This change is necessary for infractions similar to those addressed by code 396, for misuse of the mail.

Reservation of code 397, regarding use of the telephone for abuses other than illegal activity which do not circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a Moderate category prohibited act.

We propose to delete this prohibited act code because it has been misused to prohibit conduct that actually has already circumvented the ability of staff to monitor telephone use, rather than activity that has the potential to circumvent monitoring.

This code had been misunderstood as a less-severe version of code 297, which allows for discipline of conduct that circumvents monitoring for an illegal purpose. Inmates have been identified as having committed prohibited acts that would result in circumvention of telephone monitoring but did not actually result in circumvention of monitoring. These inmates were then downgraded or shown leniency by being charged with a 397-level code instead of the appropriate 297-level code. For this reason, we eliminate the 397 code to avoid confusion and to clarify that inmates should be disciplined for any conduct that may circumvent the ability of staff to monitor communications, regardless of whether monitoring is actually circumvented.

Reservation of the Low Severity Level prohibited act codes (400 series).

We propose to delete the Low Severity Level prohibited act code (400) series entirely. Currently, there are six active codes listed, which we propose to remove for the following reasons:

“402 Malingering, feigning illness.” We propose to remove this prohibited act code because malingering does not typically require disciplinary action. However, because feigning an illness equates to lying or providing a false statement to a staff member, we have incorporated that portion of this code into code 313 above.

“404 Using abusive or obscene language.” As described earlier, we propose to increase the severity level of Low Severity Level code 404, using abusive or obscene language, to Moderate Severity Level prohibited act code 337. Further, because we have significantly reduced the level of disciplinary segregation sanction that may be imposed for the Moderate Severity Level prohibited act codes, it must be noted that moving this conduct from the “Low” to

the “Moderate” category does not change the severity of potential sanctions that may be imposed. Further, staff will be instructed that the inmate’s level of misconduct must be greater than that previously triggering an incident report for a “Low” prohibited act code.

“407 Conduct with a visitor in violation of Bureau regulations” and “409 Unauthorized physical contact (e.g., kissing, embracing).” As described earlier, we propose to increase the severity level of Low Severity Level code 407 and 409 for inappropriate conduct in the visiting room. These codes would combine to become Moderate Severity Level prohibited act code 338, “unauthorized conduct in the visiting room (e.g., kissing, embracing, etc.).”

Because we have significantly reduced the level of disciplinary segregation sanction that may be imposed for the Moderate Severity Level prohibited act codes, it must be noted that moving this conduct from the “Low” to the “Moderate” category does not change the severity of potential sanctions that may be imposed. Because we increase the seriousness of the offense, staff will be instructed that the inmate’s level of misconduct must be greater than that previously triggering an incident report for either of the two previous 400-level “Low” prohibited act codes.

“498 Interfering with a staff member in the performance of duties most like another Low Severity prohibited act” and “499 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Low Severity prohibited act.” Both of these codes indicate that they are “to be used only when another charge of Low Severity is not accurate. The offending conduct must be charged as ‘most like’ one of the listed Low Severity prohibited acts.” We propose to eliminate these codes because they are vague and because the conduct described is more accurately specified by other codes listed in the Greatest, High, and Moderate Severity prohibited act codes.

Because we propose to delete the Low Severity Level, we likewise propose to delete language relating to the Low Severity Level in Table 2 to § 541.3 – Additional Available Sanctions for repeated Prohibited Acts Within the Same Severity Level.

Modifications to the disciplinary segregation sanction.

In the mid-2000s, the Bureau experienced a spike in prison violence, including the murder of a correctional officer. In response, the Bureau implemented several additional measures, including harsher penalties for inmates who violated disciplinary rules. In particular, this approach resulted in regulation changes that increased the length of maximum possible time for the penalties of disciplinary segregation time (75 FR 76263, December 8, 2010; effective on March 1, 2011).

Maximum terms of segregation under current Bureau regulations are as follows:

| Severity Level | First Offense | Subsequent Offense(s) |
|-----------------------|----------------------|------------------------------|
| Greatest (100) | 12 months (365 days) | 545 days |
| High (200) | 6 months (180 days) | 365 days |
| Moderate (300) | 3 months (90 days) | 180 days |
| Low (400) | Not permitted | 30 days |

After 2011, the Bureau experienced a decline in its restrictive housing population, which coincided with a reduction in inmate-on-staff assaults at Bureau facilities. The chart below compares the number of inmates in segregation to the total prison population between January 2012 and August 2021, illustrating the decline in restrictive housing population.

| OVERVIEW OF BUREAU'S RESTRICTIVE HOUSING (Adapted from Bureau's SENTRY Recordkeeping System) | | | | |
|--------------------------------------------------------------------------------------------------------|-----------------|-----------------|------------------------|------------------|
| Type of Housing | 01/28/12 | 08/05/21 | Change | |
| | | | Total Reduction | % Decline |
| All Bureau inmates | 175244 | 138235 | 37009 | 21.12 |
| Total in Restrictive Housing | 13196 | 10236 | 2960 | 22.43 |
| Special Housing Units (SHU) | 11106 | 9361 | 1745 | 15.71 |
| Special Management Unit (SMU) | 1647 | 533 | 1114 | 67.64 |
| Administrative Maximum (ADX) | 443 | 342 | 101 | 22.80 |

As a result of the decline in imposition of the disciplinary segregation sanction, the Report recommended that the Bureau reduce the maximum time an inmate can be placed in segregation as a sanction for a disciplinary infraction. The Report recommended elimination of

the disciplinary segregation sanction for all 400-level prohibited acts, and for an inmate's first adjudicated violation of all 300-level prohibited acts, and that the Bureau reclassify some 300-level prohibited acts as 200-level acts due to the more serious nature of these offenses. The following chart illustrates the recommendations of the Report:

| Offense Type | Current Maximum Penalties | | Proposed Maximum Penalties | |
|------------------|---------------------------|------------|----------------------------|------------|
| | First Offense | Subsequent | First Offense | Subsequent |
| 100-Level | 365 days | 545 days | 60 days | 90 days |
| 200-Level (High) | 180 days | 365 days | 30 days | 60 days |
| 300-Level | 0 days | 180 days | 0 days | 15 days |
| 400-Level (Low) | 0 days | 30 days | ----- | ----- |

Therefore, the Bureau now proposes that maximum penalties for disciplinary segregation sanctions for Greatest, High, and Moderate prohibited act codes be decreased as suggested in the Report (see chart above). This would effectively undo the change to disciplinary segregation sanction maximums made by the final rule of 2011.

This change would result in changes to 28 CFR 541.3, Table 1 to § 541.3 – Prohibited Acts and Available Sanctions, in the “Available Sanctions” listed for each severity level prohibited acts category. The disciplinary segregation sanction is listed in each “Available Sanctions” sub-table as item C. and would be modified according to the chart shown above. Likewise, 28 CFR 541.3 Table 2 to § 541.3 – Additional Available Sanctions for Repeated Prohibited Acts Within the Same Severity Level, would be similarly modified to reflect the chart shown above.

Changes to Loss of Privilege Sanctions.

In 28 CFR 541.3 Table 1 to § 541.3 – Prohibited Acts and Available Sanctions, each severity level of prohibited act codes is followed by a table listing available sanctions that may be imposed on inmates if they are found to have committed those acts by DHOs. One such sanction found in each table is the “loss of privileges” sanction. In each “available sanctions” list, the “loss of privileges” sanction is followed by a descriptive parenthetical, as follows: “Loss of privileges (e.g., visiting, telephone, commissary, movies, recreation).”

We now propose to add to that descriptive parenthetical the following additional examples of privileges that may be removed as a potential sanction: video visits, electronic device(s), and the use of electronic mail and messaging of any kind, including, but not limited to, through the TRULINCS system. We add these terms to accommodate advances in technology and to clarify that the Bureau views these items as privileges for inmates. However, the Bureau emphasizes that none of these sanctions should affect an inmate's right to counsel and the ability of an inmate to meet or otherwise communicate with counsel. Accordingly, the Bureau clarifies that no employee may impose as a sanction any measure whatsoever that restricts an inmate's right of access to counsel.

Amendments to Table 2 to § 541.3 – Additional Available Sanctions for Repeated Prohibited Acts Within the Same Severity Level.

In addition to eliminating references to Low Severity Level (400-series) prohibited acts as described above, we propose the following changes to Table 2: First, we propose to change second column heading from “Time period for prior offense (same code)” to “Time period for Prior Offense (same severity level).” We make this change because it has been misinterpreted as applying only to commission of the same specific code conduct. Instead, the application is intended to apply to commission of any prior offense within the same severity level as the first or second offense. In other words, if an inmate was found to have violated code 396, some staff mistakenly assumed that if the same inmate then violated code 334, the available sanctions in the table would not apply. This proposed change is meant to clarify that if an inmate is found to have committed a prohibited act in any severity level, and then commits any other prohibited act within the same severity level, whether it is the same actual code number or not, the inmate may be subject to additional sanctions for this additional prohibited conduct.

Second, we modify the time periods for additional available sanctions in each severity level to decrease the amount of disciplinary segregation time, as described above.

Third, to correct an oversight in changes made to conform to the requirements of the First Step Act of 2018, we amend Table 2 to indicate that if an inmate commits the same Moderate

Severity Level (300-series) offense, thereby violating the same prohibited act code within six months, up to seven days of FSA Earned Time Credits may be forfeited; and if an inmate commits a third violation of the same Moderate Severity Level prohibited act code within six months, the inmate may forfeit up to fourteen days of FSA Earned Time Credits. This amendment is consistent with the Bureau's regulations regarding FSA Earned Time Credit, as published at 87 FR 2705 (Jan. 19, 2022). No substantive changes are made to the sanctions as published in that regulation; rather, language relating to subsequent offenses of the same prohibited act code has been moved from Table 1 to Table 2, which is the correct location.

Amendments to 28 CFR 541.5, regarding the discipline process.

Currently, 28 CFR 541.5(a), describing the incident report, explains that the disciplinary process begins when staff reasonably believe the inmate has committed a prohibited act. We make a minor stylistic edit to the language regarding the composition of the incident report but make no substantive changes to this section. Likewise, we make similar stylistic edits to language in subparagraph (b) describing the investigation process, but do not change the substance of this regulation, or its application.

Amendments to 28 CFR 541.7, regarding unit discipline committee review.

We propose to clarify when the Unit Discipline Committee (UDC) will review the incident report. Currently, 28 CFR 541.7(c) indicates that the UDC ordinarily reviews the incident report "within five work days after it is issued, not counting the day it was issued, weekends, and holidays." Inmates and staff found that description confusing and problematic, due to disparity between the time staff become aware of incidents and when incident reports are actually issued. At times, incident reports cannot be issued immediately for various reasons, including time and attention needed to resolve the situation that led to the incident in question.

Therefore, we propose to clarify that the UDC will ordinarily review the incident report within five work days "after the day staff become aware of the inmate's involvement in the incident, not counting the day staff became aware of the inmate's involvement, weekends, or

holidays.” This will result in more immediate action and less confusion regarding discipline.

We also propose to make a minor change to 28 CFR 541.7(f), to clarify that the UDC may not impose monetary restitution as a sanction for inmate disciplinary infractions.

Subparagraph (f) of 28 CFR 541.7 currently indicates that the UDC may impose “any of the available sanctions listed in Tables 1 and 2, except loss of good conduct sentence credit, disciplinary segregation, or monetary fines.” We propose to add “monetary restitution” to this list in order to clarify for staff that this is a sanction that may only be imposed at the DHO level. This is not a change to current practice or the substance of regulation, but rather a technical correction.

Clarification of 28 CFR 541.8, regarding hearings by Discipline Hearing Officers.

We make a minor change to the language of 28 CFR 541.8(a)(3) to clarify that the incident report may be referred back to the UDC for further investigation, review, disposition, *or other action as recommended or necessary*. This more accurately states the purpose of this section, but makes no substantive changes or changes in application.

II. Regulatory Analyses

Executive Orders 12866, 13563, and 14094 (Regulatory Review).

The Department has determined that this rulemaking is a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, but it is not a section 3(f)(1) significant action. Accordingly, this proposed rule has been submitted to the Office of Management and Budget (“OMB”) for review. This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation; in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation, and in accordance with Executive Order 14094, “Modernizing Regulatory Review”.

Executive Order 12988 (Plain Language).

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

Executive Order 13132 (Federalism).

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act.

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of inmates committed to the custody of the Attorney General or the Director of the Bureau of Prisons. Its economic impact is limited to the Bureau’s appropriated funds.

Since January 2012, the Bureau has reduced the total number of inmates in restrictive housing by nearly 25 percent. The Department estimates that the changes made by this proposed rule will result in additional substantial reductions in the Bureau’s restrictive housing population. Although it is impossible to quantify the exact size of the future reductions, the Department notes that other state and local correctional systems implementing reforms, including those jurisdictions discussed in earlier in this Report, have reported reductions in their restrictive housing populations in recent years by nearly 50 percent or more.

Unfunded Mandates Reform Act of 1995.

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will

not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act.

This rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act. This regulation will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 541

Prisoners.

Colette S. Peters,
Director,
Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 541 as follows:

PART 541 — INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161-4166 (Repealed as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

Subpart A – Inmate Discipline Program

2. Revise § 541.1 to read as follows:

§ 541.1 Purpose.

(a) Nothing in this subpart shall be construed to create a private right of action or otherwise permit civil claims for alleged violations.

(b) The purpose of the inmate discipline program is to help ensure the safety, security, and orderly operation of correctional facilities, and the protection of the public, by sanctioning inmates who commit prohibited acts.

(c) The purpose of this subpart is to describe the inmate discipline program of the Federal Bureau of Prisons (Bureau), authorized by 18 U.S.C. 4042(a)(3), and to ensure that disciplinary sanctions will not be imposed in a capricious or retaliatory manner.

(d) Consistent with the Rehabilitation Act of 1973, for all discipline cases, the Unit Discipline Committee or Disciplinary Hearing Officer shall consider the individual inmate's mental health and disabilities when determining the appropriateness of sanctions.

3. Revise § 541.2 to read as follows:

§ 541.2 Application.

(a) Staff authorized to implement the Inmate Discipline Program. For the purposes of this subpart, "staff" means staff authorized by the Bureau to implement the inmate discipline program as described in this subpart. Residential Reentry Center employees are staff authorized to implement the Inmate Discipline Program.

(b) Application of the Inmate Discipline Program. This program applies to sentenced and unsentenced inmates in:

(1) Bureau custody; and

(2) Any prison, institution, or facility, including community confinement facilities, in which persons are held in custody by direction of, or under an agreement with, the Bureau of Prisons.

4. Revise § 541.3 to read as follows:

§ 541.3 Prohibited acts and available sanctions.

(a) *Prohibited acts.* The list of prohibited acts is divided into three separate categories based on severity: Greatest; High; and Moderate.

(b) *Available sanctions.* The list of available sanctions for committing prohibited acts is listed in Table 1 to this section —Prohibited Acts and Available Sanctions. If you commit repetitive prohibited acts, we can impose increased sanctions, as listed in Table 2 to this section —Additional Available Sanctions for Repeated Prohibited Acts Within the Same Severity Level. No Bureau employee may impose as a sanction any measure whatsoever that restricts an inmate's right of access to counsel.

Table 1 to § 541.3 - Prohibited Acts and Available Sanctions

Greatest Severity Level Prohibited Acts

101 An attempted or accomplished assault and/or battery of any person involving serious physical injury, or an armed assault on the institution's secure perimeter.

102 Escape (unauthorized departure from custody), including, but not limited to, any of the following: unauthorized departure from the buildings, lands, property or perimeter (inside or outside) of any secure or non-secure facility; unauthorized departure from community confinement, work detail, program or activity (whether escorted or unescorted); and unauthorized departure from any authorized location regardless of electronic monitoring devices.

103 Causing ignition or combustion (including, but not limited to, fire or explosion) which threatens serious bodily harm; or is done in furtherance of another Greatest Severity Level prohibited act.

104 Possession, manufacture, or introduction of any item that has been weaponized (including, but not limited to, firearms, sharpened instruments, unauthorized blades, explosives, ammunition, unauthorized chemicals, or any other item that has been modified in order to be used as a weapon).

105 Rioting; promoting rioting; or encouraging others to participate in a riot ("riot" is defined as a disturbance with two or more people which involves violence or threats of violence or damage to government property, for the purpose of preventing or coercing official action).

106 (Not to be used).

107 Taking hostage(s).

108 Use, possession, manufacture, introduction, or loss of a hazardous item, including, but not limited to, items which may facilitate escape; cause serious bodily harm to others; or are otherwise hazardous to institutional security or personal safety (e.g., hacksaw blade, body armor, maps which could facilitate escape, handmade rope, or other escape paraphernalia, portable telephone, pager, other electronic device or items necessary in the use of these devices).

109 (Not to be used).

110 Refusing to provide a urine sample or take part in any narcotics or drug testing.

111 Introduction or manufacture of any narcotics, marijuana, drugs, or related paraphernalia, not prescribed for the individual by authorized medical staff.

112 Use of any narcotics, marijuana, drugs, or related paraphernalia, not prescribed for the individual by authorized medical staff.

113 Possession of any narcotics, marijuana, drugs, or related paraphernalia, not currently prescribed for the individual by authorized medical staff.

114 Sexually explicit conduct involving force, threat of force, or threat of harm; or sexually explicit conduct without consent or through coercion; or attempts thereof. This definition encompasses, but is not limited to, conduct that rises to the level of assault and sexually explicit conduct that staff have observed and instructed an inmate to cease. The term "sexually explicit conduct" means actual or simulated--

(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(ii) bestiality;

(iii) masturbation;

(iv) sadistic or masochistic abuse; or

(v) lascivious exhibition of the anus, genitals, or pubic area of any person.

115 Destroying and/or disposing of any item during a search or attempt to search.

116 Refusing to breathe into a breathalyzer or take part in any alcohol or intoxicant testing.

117 Introduction or manufacture of any alcohol, intoxicants, or related paraphernalia not prescribed for the individual by authorized medical staff.

118 Use of any alcohol, intoxicants, or related paraphernalia not currently prescribed for the individual by authorized medical staff.

119 Possession of any alcohol, intoxicants, or related paraphernalia not currently prescribed for the individual by authorized medical staff.

194 Accessing, using, or maintaining social media accounts (including, but not limited to the following: Facebook, Twitter, Instagram, Snapchat, TikTok, etc.), or directing others to establish or maintain social media accounts on the inmate's behalf for the purpose of committing or aiding in the commission of a criminal act; of committing or aiding in the commission of any Greatest category prohibited act; or of circumventing authorized communications monitoring for the purpose of committing or aiding in the commission of a criminal act or of any Greatest category prohibited act. This code also prohibits inmates' use of fund transfer services such as CashApp, as explained in more detail below.

195 Use of video visits to commit or aid in the commission of a criminal act or any Greatest category prohibited act.

196 Use of the mail or any form of electronic mail and messaging (including messaging through the TRULINCS system), for an illegal purpose or to commit or further a Greatest Severity Level prohibited act.

197 Use of the telephone for an illegal purpose or to commit or further a Greatest category prohibited act.

198 Interfering with a staff member in the performance of duties most like another Greatest severity prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be charged as "most like" one of the listed Greatest severity prohibited acts.

199 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Greatest severity prohibited act. This charge is to be

used only when another charge of Greatest severity is not accurate. The offending conduct must be charged as “most like” one of the listed Greatest severity prohibited acts.

Available Sanctions for Greatest Severity Level Prohibited Acts

- A. Recommend parole date rescission or retardation.
- B. Forfeit and/or withhold earned statutory good time or non-vested good conduct time (up to 100%) and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
 - B.1. Disallow ordinarily between 50% and 75% (27–41 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
 - B.2. Forfeit up to 41 days of earned First Step Act (FSA) Time Credits (*see* [28 CFR part 523, subpart E](#)) for each prohibited act committed.
- C. Disciplinary segregation (up to 60 days).
- D. Make monetary restitution.
- E. Monetary fine.
- F. Loss of privileges (e.g., visiting, video visits, telephone, commissary, movies, recreation, electronic device(s), electronic mail, electronic messaging through the TRULINCS system).
- G. Change housing (quarters).
- H. Remove from program and/or group activity.
- I. Loss of job.
- J. Impound inmate's personal property.
- K. Confiscate contraband.
- L. Restrict to quarters.
- M. Extra duty.

High Severity Level Prohibited Acts

- 200 (Not to be used).
- 201 Fighting, defined as a hostile physical or verbal encounter between two or more persons.
- 202 Possession of any forms that may be used in the fraudulent filing of Uniform Commercial Code liens, or attempting to publicly disclose the private information of others for unlawful purposes.
- 203 Communicating intent to jeopardize the safety, security, and orderly operation of a Bureau facility, the public, or the person or property of another.

- 204 Extortion, blackmail, or otherwise demanding or receiving anything of value through use of actual or threatened force, violence, fear, or intimidation.
- 205 (Not to be used).
- 206 (Not to be used).
- 207 Wearing a disguise or a mask.
- 208 Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys), or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure.
- 209 Adulteration of any food or drink.
- 210 Possession of sexually explicit material.
- 211 Possessing any officer's or staff clothing.
- 212 Participating or promoting others to participate with two or more persons in unauthorized behavior, whether planned or unplanned (including, but not limited to, group demonstrations, sit-ins, refusing to eat, creating or circulating a petition, refusal to work, work stoppage, etc.).
- 213 (Not to be used).
- 214 (Not to be used).
- 215 (Not to be used).
- 216 Giving or offering a staff member something of value to persuade or induce favor or action.
- 217 Giving money to, or receiving money from, any person for the purpose of introducing contraband or any other illegal or prohibited purpose.
- 218 Destroying, altering, or damaging any of the following: property valued over \$100.00 belonging to the government or another person; property necessary for the protection of life and/or safety (e.g., fire alarms), regardless of financial value.
- 219 Stealing; theft (including data obtained through the unauthorized use or access to any media or equipment on which electronic data is stored).
- 220 Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill (except for drill authorized by staff).
- 221 Being in an unauthorized area with another person without staff permission.
- 222 (Not to be used).
- 223 (Not to be used).

224 An assault of any person not involving serious physical injury, including non-consensual touching.

225 Stalking another person through repeated behavior which harasses, alarms, or annoys the person, after having been previously warned to stop such conduct.

226 Possession of stolen property.

227 Refusing to participate in a required physical test or examination unrelated to testing for drug abuse (e.g., DNA, HIV, tuberculosis).

228 Body modification (including, but not limited to tattooing and piercing); and possession of any paraphernalia and/or tools for the use of any form of body modification.) This code shall not be applied to acts of self-directed violence (e.g., cutting), nor shall it apply to any instance in which an inmate self-directs violence or harm.

229 (Not to be used).

230 Possession or use of smoking apparatus and tobacco in any form (including, but not limited to, vape devices and other non-conventional forms of delivery), or related paraphernalia.

231 Requesting, demanding, or pressuring an inmate to produce or display his/her own court documents or other documents (e.g., PATTERN scoresheets) that contain information about the inmate's current or prior offense(s) for any unauthorized purpose to another inmate.

232 Introduction of any unauthorized non-hazardous item or contraband. ("Non-hazardous items or contraband" include, but are not limited to, items not likely to facilitate escape; cause serious bodily harm to others; or otherwise be hazardous to institutional security or personal safety, e.g., food, cosmetics, cleaning supplies, unauthorized nutritional/dietary supplements.)

235 Communicating gang affiliation; participating in gang related activities; possession of paraphernalia indicating gang affiliation.

294 Accessing, using, or maintaining social media, or directing others to establish or maintain social media accounts on the inmate's behalf (including, but not limited to the following: Facebook, Twitter, Instagram, Snapchat, TikTok, etc. or any successor).

295 Use of video visits for abuses other than criminal activity, including, but not limited to, conduct which circumvents established video visit session monitoring procedures; conduct which permits communication with individuals other than the authorized visitors; conduct which would be unauthorized if it were to occur in an in-person visiting room; or use of the video session to commit or further a High category prohibited act.

296 Use of the mail, including electronic mail and messaging (e.g. messaging through the TRULINCS system) for abuses other than criminal activity which circumvent mail monitoring procedures (e.g., use of the mail or email to commit or further a High category prohibited act,

special mail abuse; writing letters or messages in code; directing others to send, sending, or receiving a letter, mail or email through unauthorized means; sending mail or email for other inmates without authorization; sending correspondence to a specific address or forwarding service with directions to have the correspondence forwarded; and using a fictitious return address in an attempt to send or receive unauthorized correspondence).

297 Use of the telephone for abuses other than illegal activity which circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a High category prohibited act.

298 Interfering with a staff member in the performance of duties most like another High severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be charged as “most like” one of the listed High severity prohibited acts.

299 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another High severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be charged as “most like” one of the listed High severity prohibited acts.

Available Sanctions for High Severity Level Prohibited Acts

- A. Recommend parole date rescission or retardation.
- B. Forfeit and/or withhold earned statutory good time or non-vested good conduct time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
 - B.1 Disallow ordinarily between 25% and 50% (14–27 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
 - B.2 Forfeit up to 27 days of earned FSA Time Credits for each prohibited act committed.
- C. Disciplinary segregation (up to 30 days).
- D. Make monetary restitution.
- E. Monetary fine.
- F. Loss of privileges (e.g., visiting, video visits, telephone, commissary, movies, recreation, electronic device(s), electronic mail, electronic mail and messaging through the TRULINCS system).
- G. Change housing (quarters).
- H. Remove from program and/or group activity.
- I. Loss of job.
- J. Impound inmate’s personal property.

- K. Confiscate contraband.
- L. Restrict to quarters.
- M. Extra duty.

MODERATE SEVERITY LEVEL PROHIBITED ACTS

- 300 (Not to be used).
- 301 (Not to be used).
- 302 Misuse of authorized medication.
- 303 Possession of money or currency, unless specifically authorized, or in excess of the amount authorized.
- 304 Loaning of property or anything of value for profit or increased return.
- 305 Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.
- 306 Refusing to work or to accept a program assignment.
- 307 Refusing to obey an order of any staff member (may be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed, *e.g.*, failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered as part of a drug-abuse test would be charged as 110).
- 308 Violating a condition of a furlough.
- 309 Violating a condition of a community program.
- 310 Unexcused absence from work or any program assignment.
- 311 Failing to perform work as instructed by the supervisor.
- 312 Insolence towards a staff member.
- 313 Providing a false statement to a staff member, to include feigning illness.
- 314 Counterfeiting, forging, or unauthorized reproduction of any document, article of identification, money, security, or official paper (may be categorized in terms of greater severity according to the nature of the item being reproduced, *e.g.*, counterfeiting release papers to effect escape, Code 102).
- 315 Participating in an unauthorized meeting or gathering.
- 316 Being in an unauthorized area without staff authorization.
- 317 Failure to follow safety or sanitation regulations (including safety regulations, chemical instructions, tools, MSDS sheets, OSHA standards).

- 318 Using any equipment or machinery without staff authorization.
- 319 Using any equipment or machinery contrary to instructions or posted safety standards.
- 320 Failing to stand count.
- 321 Interfering with the taking of count.
- 322 (Not to be used).
- 323 (Not to be used).
- 324 Gambling; possession of gambling paraphernalia; or preparing or conducting a gambling pool.
- 325 (Not to be used).
- 326 (Not to be used).
- 327 Unauthorized contacts with the public.
- 328 Giving money or anything of value to, or accepting money or anything of value from, another inmate or any other person without staff authorization.
- 329 Destroying, altering, or damaging government property, or the property of another person, having a value of \$100.00 or less.
- 330 Being unsanitary or untidy; failing to keep one's person or quarters in accordance with posted standards.
- 331 Possession, manufacture, or loss of a non-hazardous item or contraband (“non-hazardous item or contraband” includes, but is not limited to, items not likely to be used in an escape; items not likely to serve as a weapon capable of doing serious bodily harm to others; items not hazardous to institutional security or personal safety; unauthorized food, cosmetics, cleaning supplies, and unauthorized nutritional/dietary supplements).
- 332 (Not to be used).
- 333 Fraudulent or deceptive completion of a skills test (*e.g.*, cheating on a GED, or other educational or vocational skills test).
- 334 Conducting a business; conducting or directing an investment transaction without staff authorization.
- 335 (Not to be used).
- 336 (Not to be used).
- 337 Using obscene or abusive language directed at another person or people.
- 338 Unauthorized conduct in the visiting room (*e.g.* kissing, embracing, etc.).

396 Use of the mail, including electronic mail and messaging, for abuses other than criminal activity which do not circumvent mail or email monitoring; or use of the mail or email to commit or further a Moderate category prohibited act.

397 (Not to be used).

398 Interfering with a staff member in the performance of duties most like another Moderate severity prohibited act. This charge is to be used only when another charge of Moderate severity is not accurate. The offending conduct must be charged as “most like” one of the listed Moderate severity prohibited acts.

399 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Moderate severity prohibited act. This charge is to be used only when another charge of Moderate severity is not accurate. The offending conduct must be charged as “most like” one of the listed Moderate severity prohibited acts.

Available Sanctions for Moderate Severity Level Prohibited Acts

- A. Recommend parole date rescission or retardation.
- B. Forfeit and/or withhold earned statutory good time or non-vested good conduct time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
 - B.1 Disallow ordinarily up to 25% (1–14 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
 - B.2 Forfeit up to 27 days of earned FSA Time Credits for each prohibited act committed.
- C. Disciplinary segregation (up to 15 days).
- D. Make monetary restitution.
- E. Monetary fine.
- F. Loss of privileges (e.g., visiting, video visits, telephone, commissary, movies, recreation, electronic device(s), electronic mail, electronic mail and messaging through the TRULINCS system).
- G. Change housing (quarters).
- H. Remove from program and/or group activity.
- I. Loss of job.
- J. Impound inmate's personal property.
- K. Confiscate contraband.
- L. Restrict to quarters.
- M. Extra duty.

| Low Severity Level Prohibited Acts | |
|------------------------------------------------------------|--------|
| | (None) |
| Available Sanctions for Low Severity Level Prohibited Acts | |
| | (None) |

Table 2 to § 541.3 - Additional Available Sanctions for Repeated Prohibited Acts Within the Same Severity Level.

| Prohibited Act Severity Level | Time Period for Prior Offense (same severity level) | Frequency of Repeated Offense | Additional Available Sanctions |
|-------------------------------|-----------------------------------------------------|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Moderate Severity (300 level) | 6 months | 2 nd offense | 1. Disciplinary segregation (up to 15 days). 2. Forfeit earned SGT or non-vested GCT up to 37½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended). 3. Forfeit up to 7 days of earned FSA Time Credits (only where the inmate is found to have committed a second violation of the same prohibited act within 6 months). |
| | | 3 rd or more offense within 6 months | 1. Any available High Severity Level sanction (200 series). 2. Forfeit up to 14 days of FSA Time Credits (only where the inmate is found to have committed a third violation of the same prohibited act within 6 months). |
| High Severity (200 level) | 10 months | 2 nd offense | 1. Disciplinary segregation (up to 60 days). 2. Forfeit earned SGT or non-vested GCT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended). |
| | | 3 rd or more offense | Any available Greatest severity level sanction (100 series). |
| Greatest Severity (100 level) | 24 months | 2 nd or more offense | Disciplinary segregation (up to 90 days). |

§ 541.4 [Amended]

5. Amend § 541.4 by removing paragraph (b)(4).
6. Amend § 541.5 by revising paragraphs (a), (b) introductory text, (b)(2) and (3) to read as follows:

§ 541.5 Discipline process.

(a) *Incident report.* The discipline process starts when staff witness or reasonably believe that you committed a prohibited act. An incident report describing the incident and the prohibited act(s) you are charged with committing will be issued to you, which you will ordinarily receive within 24 hours of staff becoming aware of your involvement in the incident.

(b) *Investigation.* After you receive an incident report, it will be investigated.

* * * * *

(2) *Statement.* When asked for your statement, you may give an explanation of the incident, request any witnesses be interviewed, or request that other evidence be obtained and reviewed. However, the investigation of the incident report may be suspended before requesting your statement if it is being investigated for possible criminal prosecution.

(3) *Informally resolving the incident report.* The incident report may be informally resolved at any stage of the disciplinary process, for Moderate Severity Level prohibited acts, or as otherwise required by law or these regulations. The incident report will not be removed from your discipline records, unless it is informally resolved or expunged.

7. Amend § 541.7 by revising the section introductory text, paragraphs (c) and (f) to read as follows:

§ 541.7 Unit Discipline Committee (UDC) review of the incident report.

A Unit Discipline Committee (UDC) will review the incident report once the investigation is complete. The UDC's review involves the following:

* * * * *

(c) *Timing.* The UDC will ordinarily review the incident report within five work days after the day staff became aware of the inmate's involvement in the incident, not counting the day staff become aware of the inmate's involvement, weekends, or holidays. UDC review of the incident report may also be suspended if it is being investigated for possible criminal prosecution.

* * * * *

(f) *Sanctions.* If you committed a prohibited act(s), the UDC can impose any of the available sanctions listed in Tables 1 and 2, except loss of good conduct sentence credit, FSA Time Credits, disciplinary segregation, monetary restitution, or monetary fines.

* * * * *

8. Amend § 541.8 by revising paragraph (a)(3) to read as follows:

§ 541.8 Discipline Hearing Officer (DHO) hearing.

* * * * *

(a) * * *

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(3) The incident report will be referred back for further investigation, review, disposition, or other action as recommended or necessary.

* * * * *

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